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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 43297**
Plaintiff-Respondent,	)	
	)	**Valley Co. Case No.**
v.	)	**CR-2007-50**
	)	
CHRISTOPHER LEE MARTIN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

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District Judge

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STATEMENT OF THE CASE

Nature of the Case

Christopher Lee Martin appeals from the district court's order denying his Rule 35 Motion seeking additional credit for time served.

Statement of Facts and Course of Proceedings

The state charged Martin with felony burglary and malicious injury to property and with misdemeanor petit theft, malicious injury to property and unlawful entry (hereinafter collectively "burglary charges"). (R., pp. 7-10.) At the time, Martin was in the custody of the Idaho Department of Correction serving a sentence for an arson conviction. (See PSI, pp. 3, 35-48; R., p. 114.) On February 16, 2007, Martin was served with a Hold Notice Request for the burglary charges. (R., p. 114.) Martin was released on parole on August 14, 2009. (PSI, p. 3.) On August 18, 2009, Martin appeared in Valley County to answer for the burglary charges and the magistrate released Martin on his own recognizance ("ROR"). (See R., pp. 33-35.) On September 18, 2009, Martin pled guilty to the burglary charge and the remaining charges were dismissed. (R., pp. 41-43.) The district court set sentencing for November 23, 2009. (Id.)

Prior to the sentencing hearing, Martin, who was still ROR in the burglary case, violated his parole in the arson case by "Unauthorized Sexual Contact and Unauthorized use of a computer." (PSI, p. 3; R., pp. 69-70.) Based upon his parole violation, Martin was again placed in the custody of the Idaho Department of Correction. (R., p. 129.) On December 23, 2009, Martin was served with a

Hold Notice Request for missing his sentencing hearing for the burglary charge. (R., p. 121.)

Martin's burglary case did not proceed to sentencing until February 28, 2013. (R., pp. 69-71.) At the sentencing hearing the district court noted Martin was "[c]learly released early on and not a lot of time served." (Id.) The Court minutes reflect the following:

> Judge: Recalls case. Clearly released early on and not a lot of time served. He in custody August 14th to 18th and then bonded. Court can take that into account in devising sentence. How long sentenced?
>
> …
>
> Judge: Defendant arraigned 9/18/2009 and plead Count I and accepted and sentencing for 11/23/2009 and FTA and because of his own actions caused parole. His FTA was direct result choices he made attempting associate with females. That is his fault, his choices caused him to have his probation revoked.

(R., pp. 69-70.) The district court sentenced Martin to six years, with one year fixed, and retained jurisdiction. (Id; R., pp. 74-77.) The district court then engaged in a discussion with the prosecutor regarding how much credit Martin was entitled to. (Id.) The district court explained that it gave credit "wherever I can find it" and that it gave Martin a lesser sentence to reflect the time Martin spent in custody. (Id.)

The district court entered a Judgment of Conviction and Sentence, and held "For record purposes only, the defendant is entitled to credit for fifty-one (51)-days served as of the 28th day of February, 2013." (R., pp. 74-77.)

Martin filed a motion titled "Relinquish of Rider" in which he requested to be relinquished from the rider program. (R., pp. 80-81.) Martin explained:

> I will not be doing this program because
> 1) I think it's a joke.
> 2) I will be topping all sentences.

(R., pp. 80-81 (spelling and punctuation corrected).) At the subsequent rider review hearing the district court noted that, "Frankly this court tried give defendant every opportunity to help himself – chickened out and did not want work make changes – gross cognitive self change error." (R., p. 84.) Martin then argued that he should be entitled to credit for time served from December 9, 2009 until sentencing, even though he was not serving time on this case. (R., pp. 84-85.)

> P.D.: Statement. Only issue left – this case argument regarding his credit time served. Served warrant in prison. Continued statement.
>
> Judge: You are asking credit December 9, 2009.
>
> P.D.: From December 9, 2009. Another hold notice request not signed but handwriting – think clear signed on him.
>
> Judge: So I gave him credit, no time this case – why would court .. that is substantial amount time. Not know authority to do that.
>
> P.D.: That is correct. 19-2603.
>
> Judge: So you asking credit
>
> P.D.: ROR'd August 18th, 2009, then December 23rd, 2009 until now.
>
> Judge: You saying 19-2603 says court must give credit even if not in jail for this case.

P.D.: Yes. If need provide more authority I can.

Judge: Need all authority you can provide me.

P.A.: Statement. Suggest court tables this and let us know. Counsel doesn't mind table this.

(R., pp. 84-85.) The district court entered an order relinquishing jurisdiction but the district court "reserved jurisdiction" so it could rule on the question of credit for time served.[1] (R., pp. 88-90.) The district court subsequently entered an Amended Order Declining and Relinquishing Jurisdiction and Commitment and gave Martin "credit for one hundred seventy (170) days served as of June 27th, 2013." (R., pp. 96-98.)

Martin filed a Rule 35 Motion to Reduce and/or Correct Sentence with an accompanying affidavit and exhibits. (R., pp. 105-125.) Martin argued that he was entitled to credit on his burglary sentence for the time he spent incarcerated on the arson conviction and parole violation. (Id.)

The district court entered a comprehensive Order Denying Rule 35 Motion. (R., pp. 126-130.) The district court thoroughly reviewed the procedural history of the case and determined that Martin was seeking credit for time served while he was not in custody on the burglary charge. (R., pp. 128-129.)

> [Martin's] incarceration from the point of his parole-violation arrest to the time of transport to Valley County in January 2013 was not a consequence of or attributable to this case; as already noted, he was out on bond in this case when he was arrested on the parole violation.

[1] It is at best questionable whether the district court could simultaneously relinquish jurisdiction and retain jurisdiction at the same time; regardless the district court would have had jurisdiction to subsequently rule on the issue of credit for time served. See, I.C.R. 35(c).

(R., p. 129.) "[T]he fact remains that he was incarcerated in the case or cases in which he had violated the conditions of parole, not these charges." (Id.) Martin timely appealed. (R., pp. 132-136.)

ISSUE

Martin states the issue on appeal as:

Did the district court err when it denied Mr. Martin's Rule 35 motion to correct the computation of credit for time served, because he is entitled to credit for all the time served?

(Appellant's brief, p. 7.)

The state rephrases the issue as:

Has Martin failed to show the district court erred when it determined that Martin was not in custody for the burglary offense and therefore was not entitled to credit toward his burglary sentence for time he served on a separate offense?

ARGUMENT

The District Court Correctly Applied Idaho Code § 18-309 Because Martin's Rule 35 Motion Sought Credit For Time Spent Incarcerated On Separate Offense

A. Introduction

The district court did not err when it denied Martin's Rule 35 Motion for seeking additional credit for time served. (R., pp. 126-131.) Idaho Code § 18-309(1) provides, that a person "shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered." The district court correctly determined that Martin's Rule 35 Motion sought credit for incarceration that was not due to this offense. Id. The district court correctly applied Idaho Code § 18-309 and controlling case law. Id. On appeal Martin has failed to show the district court erred.

B. Standard Of Review

"The question of whether a sentencing court has properly awarded credit for time served to the facts of a particular case is a question of law, which is subject to free review by the appellate courts." State v. Vasquez, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005) (citing State v. Hale, 116 Idaho 763, 779 P.2d 438 (Ct. App. 1989)).

C. The District Court Properly Denied Martin's Rule 35 Motion Because Martin Was Not Entitled To Credit Towards His Burglary Sentence For Time Served On A Separate Offense

Idaho Code § 18-309(1) controls credit for time served and states:

> (1) In computing the term of imprisonment, the person against whom the judgment was entered shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered. The remainder of the term commences upon the pronouncement of sentence and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

I.C. § 18-309(1) (emphasis added). Based upon the plain language of the statute, the district court did not err.

Martin sought for credit towards his burglary sentence for time he served on his arson conviction and parole violation. (R., pp. 105-109, 129.) The district court held, "the fact remains that [Martin] was incarcerated in the case or cases in which he had violated the conditions of parole, not these charges." (Id.) Therefore, under the plain language of Idaho Code § 18-309(1) Martin was not entitled to credit he sought.

The district court's conclusion is supported by Idaho case law. See State v. Horn, 124 Idaho 849, 865 P.3d 176 (Ct. App. 1994); Vasquez, 142 Idaho 67, 122 P.3d 1167. In Horn, Ada County charged Horn with forgery. Horn, 124 Idaho at 849, 865 P.3d at 176. The state served the Ada County warrant on Horn while he was in custody at the Gem County jail where he was awaiting disposition on unrelated criminal charges. Id. After the disposition of the Gem County charges, Horn was transferred to respond to criminal charges in Canyon County, Owyhee County, and then in Elmore County. Id. At the conclusion of the Elmore County case Horn was remanded to the State Board of Corrections and incarcerated in prison. Id. Horn was then brought before a magistrate in

Ada County and arraigned on the Ada County complaint. Id. The Ada County magistrate released Horn on his own recognizance, which resulted in Horn being returned to the custody of the Board of Corrections. Id. Horn was eventually sentenced in Ada County and Horn's Ada County sentence was ordered to run concurrently with his other sentences. Id. The Ada County district court did not give Horn credit for any of the time Horn spent in custody in the other counties or in the custody of the Board of Corrections. Id.

Horn filed a motion for credit time served and sought credit for the 271 days that had elapsed between the service of the Ada County arrest warrant and his sentencing in Ada County. Id. at 850, 865 P.2d at 177. The district court denied Horn's motion and Horn appealed. Id. On appeal, the Idaho Court of Appeals reviewed the language of Idaho Code § 18-309 and prior case law and held that the "statute confers a right to credit only if the present incarceration was a consequence of the offense or an included offense for which the sentence is imposed." Id. (citing State v. Dorr, 120 Idaho 441, 443, 816 P.2d 998, 1000 (Ct. App. 1991); State v. Rodriguez, 119 Idaho 895, 897, 811 P.2d 505, 507 (Ct. App. 1991); Hale, 116 Idaho at 765, 779 P.2d at 440; State v. Teal, 105 Idaho 501, 504, 670 P.2d 908, 911 (Ct. App. 1983).) The Idaho Court of Appeals affirmed the decision of the district court. Id.

The Idaho Court of Appeals reached to the same conclusion in Vasquez, 142 Idaho at 68, 122 P.3d at 1168. Vasquez was serving time in Payette County when he was served with an arrest warrant from Washington County on unrelated charges. Id. The Washington County charges had no effect upon

Vasquez's liberty because he was already subject to confinement for the charges in Payette County. Id. at 68-69, 122 P.3d at 1168-1169. Therefore, under Idaho Code § 18-309, Vasquez was not entitled to credit on the Washington County charges for the time served in Payette County. Id.

Horn and Vasquez control the outcome here. Martin is not entitled to credit towards his burglary sentence for time he spent incarcerated on the arson conviction and subsequent parole violation.

On appeal Martin does not challenge the district court's finding that Martin, for the period he sought credit for time served, was not incarcerated on these burglary charges. (See R., pp. 128-130; Appellant's brief, pp. 10-15.) Instead, Martin argues that State v. Owens, 158 Idaho 1, 343 P.3d 30 (2015), "casts doubt on the Court of Appeals' causation test." (See Appellant's brief, pp. 10-15.) Martin is incorrect. Owens pled guilty to eight counts of issuing a check without funds. Owens, 158 Idaho at 2, 343 P.3d at 31. The district court ordered Owens' sentences for the eight counts to run consecutively to each other and concurrently with an Ada County sentence. Id. Owens filed a motion seeking prejudgment credit for all eight counts. Id. The Idaho Supreme Court determined that the language of Idaho Code § 18-309 is unambiguous and that a defendant is entitled to "credit for prejudgment time in custody against each count's sentence." Id. at 4, 343 P.3d at 33. Under Idaho Code § 18-309, a "defendant gets the credit only on a requirement that incarceration was for 'the offense or an included offense for which the judgment was entered.'" Id. (citing I.C. § 18-309).

> The statute continues to provide that a defendant gets the credit only on a requirement that incarceration was for "the offense or an included offense for which the judgment was entered." The statute has a mandatory directive that specifically conditions credit for time served on the fact that the incarceration was for "the offense" for which the judgment was entered. While the word "offense" is singular, the phrase "if such incarceration was for the offense or an included offense for which the judgment was entered" simply describes the type of incarceration that a defendant gets credit for. This indicates that as long as the defendant's prejudgment jail time was for "the offense" the defendant was convicted of and sentenced for, the court gives the defendant that credit. If the legislature had delineated credit for incarceration for "each case" or another description other than "the offense," the outcome would be different.

Id. Since Owens was incarcerated on all eight counts, he was entitled to credit for time served on all eight counts. See id.

Contrary to Martin's argument, Owens did not effectively overrule Vasquez and Horn.[2] In fact, Owens supports the ultimate conclusions of Vasquez and Horn because Owens specifically interpreted Idaho Code § 18-309 as providing for credit only if "the defendant's prejudgment jail time was for 'the offense' the defendant was convicted of and sentenced for." Owens, 158 Idaho at 4, 343 P.3d at 33. This was the same holding in Horn and Vasquez and is supported by the plain language of Idaho Code § 18-309.

Martin is only entitled to prejudgment credit for time served on "the offense for which judgment was entered." I.C. § 18-309(1). Because the credit Martin sought toward his burglary sentence was incarceration not due to that offense, the district court did not err when it denied Martin's Rule 35 motion.

[2] Owens neither stated nor implied it was effectively overruling Vasquez or Horn. Owens cited Vasquez once in reference to consecutive sentences. See Owens, 158 Idaho at 3-4, 343 P.3d at 32-33. Owens did not cite Horn.

CONCLUSION

The state respectfully requests this court affirm the district court's order denying Martin's Rule 35 Motion.

DATED this 25th day of February, 2016.

/s/ Ted S. Tollefson
TED S. TOLLEFSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of February, 2016, served a true and correct digital copy of the foregoing BRIEF OF RESPONDENT by emailing the brief to:

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/s/ Ted S. Tollefson
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TST/dd